(1909) 03 CAL CK 0015

In the Calcutta High Court

Radhika Mohun Ghose and Others APPELLANT

Vs

Brojendra Kumar Saha and Others RESPONDENT

Date of Decision : 30-03-1909

Acts Referred:

Citation : (1909) 03 CAL CK 0015

Judgement

1. The only question which, has been discussed in this appeal is. whether the respondent, who is a mortgage decree-holder, is entitled to interest at the rate stipulated in the mortgage bond up to the date of actual payment or up to the date fixed for payment under sections 86 and 88 of the Transfer of Property Act. The judgment-debtor objected that the decree-holder was only entitled to interest at the stipulated rate up to the fixed date. This objection was disallowed by the Subordinate Judge of Mymensingh and the judgment-debtor appeals.

2. It is now prefectly well-settled that, in mortgage decrees, although interest at the stipulated rate should ordinarily be allowed up to the date fixed for payment yet, if the Courts think fit, it has power to decree that rate of interest up to the actual realisation. The only question that really arises in this case is whether, as a matter of fact, the Subordinate Judge did decree interest at the stipulated rate up to the date fixed for payment or up to the date of actual payment. The decree under execution has been laid before us and it is to the effect that the defendant shall within six months pay (...) Aday Kary a certain sum to the plaintiff with interest up to the date of payment" (...) Aday Kal parayanta. The appellant''s contention is that by the words date of payment is meant the date fixed under sections 86 and 88 for payment of the money by the defendant, and, reliance has been placed on the decision in Maha Pershad Singh v. Surendra Mohan Singh 9 C.L.J. 288 : 4 Ind. Cas. 56. It must be admitted that the terms-of the decree in that case were very similar to the terms of the present decree and the learnt ed Judges held in that case that it was the intention of the Court which passed the decree to allow interest up to the date fixed for payment and not up to the date of actual payment. They appear to have been considerably influenced by their belief that it was the prevailing practice at these provinces to allow interest at

the contract rate only up to the date fixed for payment. This expression of their views is, no doubt, entitled to the greatest respect but, when the learned Judges go on to say that this practice of awarding interest up to the date of the expiry of the period-of-grace was universal before the decision of the Judicial Committee in Maharaja of Bharatpar v. Rani Kanno Dei 23 A. 181 : 28 I.A. 35, we are bound to say that their experience has been different from that of the members of this Bench. We have not infrequently met with decree in these provinces in which interest at the stipulated rate has been allowed by the Mofussil Courts up to the date of actual payment. But, be that as it may, the interpretation attached by these learned Judges to the terms of the decree in that particular case cannot be regarded as binding us to attach the same meaning to the words used in the present case or to find that the intention of the Subordinate Judge who passed the decree now under consideration was necessarily the same as the intention of the Court whose decree was considered by the learned Judges in the case cited. Looking at the words of the decree themselves, we find it impossible to construe the words (...) Aday Kal paryanta, as meaning ''up to the period fixed u/s 88 of the Transfer of Property Act.'' The ordinary meaning of the words ''date of payment is the date on which payment is made and ought not, we think, to be construed as meaning the date on which payment'' ought to be, but is not made. Further on, in the decree it is directed that the defendant shall pay interest on the amount of costs at the rate of six percent, per annum until the date of payment" (...) Aday Kal paryanta. It is perfectly clear that this interest, at any rate, is not confined to the period prescribed under Sectio 88 but is payable until the date of actual payment. We do not see our way to attaching, within the same few lines in the decree, two entirely distinct meanings to the same phrase (...) Aday Kal paryanta. The learned Subordinate Judge says that he does not feel any doubt in holding that the words ''date of payment'' mean the actual date of payment or realization. That is the sense, he says, in which these words are used by the Mofussil Courts. This opinion is, we think, of value as emanating from the presiding officer of the Court by which the decree was passed and as indicating the sense in which the words are generally used in that Court. Though the case is not precisely in point, we may say that the view we take of the meaning of these words is supported, to a certain extent, by the decision in Megraj Marwari v. Nursing Mohan Thakur 23 C. 846 at. 847. Several other cases have been cited. Though they may be regarded as analogous, they are not, in our opinion, precisely applicable to the point of construction raised in this appeal and we do not think it necessary to refer to them seriatim.

3. The result is that, in our opinion, the decision of the learned Subordinate Judge is right and we dismiss the appeal with costs, five gold mohurs.

